employed and as to the territory to which it should apply, but intimated that the desired result might best be obtained by raising intrastate rates. The express companies, disregarding the orders and regulations of the State Board of Railroad Commissioners, raised their intrastate rates between the five named South Dakota cities and points in every part of the state. *Held,* the Commission's order can serve as a justification for disregarding a regulation issued under state authority only to the extent necessary to remove discrimination in definite competitive territory. *American Express Co. et al* v. *State of South Dakota* (1917), 37 Sup. Ct. 656.

In reversing the decision of the Supreme Court of South Dakota, reported in P. U. R. 1917C, 471, 161 N. W. 132, Justice BRANDEIS briefly reaffirms the power of Congress to control intrastate charges of an interstate carrier to the extent necessary to prevent injurious discrimination against interstate commerce, the doctrine laid down in the *Minnesota Rate Cases,* 230 U. S. 352, 57 L. Ed. 1511, 48 L. R. A. (N. S.) 1151; and also reaffirms the intention of Congress to delegate this power to the Interstate Commerce Commission by the INTERSTATE COMMERCE ACT, 24 Stat. 379, c. 104, U. S. Comp. St. 1901, p. 3154, and the amendments thereto, the question decided in the *Shreveport* case, *Houston E. & W. T. Ry. Co.* v. *U. S.,* 234 U. S. 342, 34 Sup. Ct. 833, 58 L. Ed. 1341. Although these two decisions have been subjected to considerable adverse criticism as departures from authoritative precedents, for a scholarly treatment of which, see 28 HARVARD LAW REVIEW, p. 34, the court in the instant case holds the doctrines of those cases as established beyond controversy. The same position is upheld in *St. Louis I. M. & S. Ry. Co. et al.* v. *State* (Ark.), 197 S. W. 1. But another, and perhaps more important question, was raised for decision in the instant case by the action of the carriers in raising their rates from the five specified cities to points in all parts of the state, contrary to the orders of the state board. In the *Shreveport* case, *supra,* the order of the Interstate Commerce Commission, 23 I. C. C. 231, was definite as to the points to which the rates were to be changed; but in the present case the order itself, 39 I. C. C. 703, specified neither the territory to be affected nor the rates to be put into effect. The court holds, that in a case like the present where Federal and state authorities conflict, the order must definitely define and limit the territory in which the discrimination is found to exist, for it is only within that sphere that the power of the Federal Commission dominates state regulation. The court here finds the order sufficiently definite when read in conjunction with the report annexed thereto, and that the order of the commission did not apply to rate advances other than those in competitive territory in the southeastern part of South Dakota. The question of the power of the Interstate Commerce Commission to authorize the raising of all intrastate rates contrary to state regulations, and not merely those in competitive territory, is now being argued by certain Illinois railroads before the Commission.

CONSTITUTIONAL LAW—CONSCRIPTION ACT OF MAY 18, 1917, VALIDITY OF.—Defendant was indicted for conspiracy to commit an offense against the United States in unlawfully and wilfully aiding, abetting, and procuring per-

sons to violate the CONSCRIPTION ACT. He filed a motion to quash. *Held,* motion should be denied. *U. S.* v. *Sugar, et al.* (Dist. Ct. 1917), 243 Fed. 423.

In the principal case defendant attacked the constitutionality of the CONSCRIPTION ACT, but the court held the act not unconstitutional, because: (1) It is not contrary to the provision of the THIRTEENTH AMENDMENT prohibiting involuntary servitude. See *In re Dassler,* 35 Kans. 678. (2) Even though it may constitute class legislation, there is no provision in the FEDERAL CONSTITUTION prohibiting Congress from passing laws of that character, the inhibition of the FOURTEENTH AMENDMENT is directed against state legislation only. See *U. S.* v. *Adair,* 152 Fed. 737; *Flint* v. *Stone Tracy Co.,* 220 U. S. 107. (3) It does not infringe upon the power of review lodged in the courts because the power given to the boards to pass upon exemption claims has its source in the CONSTITUTION, in the fourteenth subdivision of Sec. 8, Art. 1. See *Ex Parte Dickey,* 204 Fed. 322; *The Grapeshot,* 76 U. S. 129. (4) The act is an exercise of power conferred upon Congress by the FEDERAL CONSTITUTION. A national government may preserve its existence by war and it is unnecessary to rely on implication, for the CONSTITUTION expressly provides that Congress shall have power to declare war—to raise armies and provide a navy and to make rules regulating same. The power to conscript results from these combined expressed powers. *Fairbank* v. *U. S.,* 181 U. S. 283; *Allen* v. *Colby,* 47 N. H. 544;; *Kneedler* v. *Lane,* 45 Pa. 238. (5) The ACT does not call out the militia for a purpose not authorized by the FEDERAL CONSTITUTION, and even if it did, it could only be questioned by a member of the National Guard. Many cases of similar nature arose during the Civil War in the Confederacy, whose Constitution relating to the military power had been adopted without change from the CONSTITUTION of the United States, and without an exception the provisions were held constitutional. *Ex Parte Hill,* 38 Ala. 429; *Ex Parte Bolling,* 39 Ala. 609; *Tarble's Case,* 13 Wallace 397; *Jeffers* v. *Fair,* 33 Ga. 347. The power of coercing the citizen to render military service is not inconsistent with liberty but is essential to its preservation. *Burroughs* v. *Peyton,* 57 Va. 470. In *Ex Parte Coupland,* 26 Texas 387, Mr. Justice BELL dissented as to the constitutionality of the CONSCRIPT LAW for the reason that the power is not expressly given in the Constitution and because it was not resorted to in the Revolutionary War, the War of 1812, nor in the War with Mexico. The answer is that it was not needed then, and if the question had arisen, there is good reason for believing that it would have been held constitutional in view of the theories expressed by the foremost statesmen of the times. See *M'Culloch* v. *Maryland,* 4 Wheat. 316; THE FEDERALIST (90-98); President MONROE, Vol. 7—NILES REGISTER, 137, 294, 2 Ed. 281. In a recent case, *Jacobson* v. *Massachusetts,* 197 U. S. 11, 1905, the court said: "The liberty secured by the FOURTEENTH AMENDMENT consists in the right of a person 'to live and work where he will.' *Allgeyer* v. *Louisiana,* 165 U. S. 578; and he may be compelled, by force if need be, against his will and without regard to his personal wishes or his pecuniary interests, or even his religious or political convictions, to take his place in the ranks of the army of his country."